COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 47 of 2001
(Old No. 144/2000)

National Insurance Co. Ltd. **…** **Appellant.**

Versus

Ram Charan Das
and others. **…** **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 03-11-1999 passed in M.A.C. Case No. 3 of 1986, Ram Charan Das & others vs. Kamaljeet Singh & others, by Motor Accident Claims Tribunal/Special Judge (E.C.Act), Dehradun ***(in Short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.5,76,000/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of claimant-respondent Nos. 1 to 5 against the O.P.No.3-appellant and O.P.No.4 to the extent of Rs. 1,50,000/- each and for rest amount of Rs. 2,76,000/- the owner of the vehicle was made liable to pay under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was the result of sole negligence on the part of the deceased or contributory negligence; and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case are that Sanjay Agarwal ***(the deceased)*** has died as a result of injuries sustained by him in a motor accident, which occurred between Patel Nagar and Saharanpur Chowk on 18.12.1985 at about 5.25 p.m. due to rash and negligent

driving by the driver of offending Truck No. URM-8234, hence the claim petition has been preferred by the dependents/legal heirs of the deceased. All the four opposite parties have contested the case by filing their written statements on different grounds. The learned Tribunal, on the pleadings of the parties, has framed as many as six Issues in the case. Issue No.1 related to rash and negligent driving by the driver of the offending Truck No. URM-8234. Issue No. 2 related to negligence on the part of the deceased. Issue No. 3 related to non-joinder of insured and owner of the Scooter No. UHL-3838. Issue No. 4 related to holding of no driving licence by the deceased-scooterist. Issue No. 5 related to the right of filing of petition by petitioner nos. 3, 4 and 5 against the O.P.Nos. 1 and 2 and Issue No. 6 related to the compensation and relief.

After considering the entire material available on record, the learned Tribunal has held on Issue No.1 and 2 that the accident in question was the result of the rash and negligent driving of the driver of truck No.URM-8234 and that the deceased was not at all guilty of negligence. The learned Tribunal took up Issue Nos. 3 and 4 together and ground that the deceased Sanjay Agarwal was holding a valid driving licence and that the insurer of the scooter in question was not at all a necessary party. On Issue No. 5, it has been held that the petitioner nos. 3,4 and 5, who are sisters and brother of the deceased are the legal heirs and dependents of the deceased, therefore, the claim petition filed by them is maintainable. Ultimately, the learned Tribunal, on Issue No. 6, has come to the conclusion that the claimants are entitled to get compensation of Rs. 5,76,000/- along with interest @ 12% per annum. Accordingly, the claim has been decreed in favour of the claimant-respondents no. 1 to 5 as against O.P.Nos. 2, 3 and 4. The learned Tribunal has also observed that the liability of O.P.Nos. 3 (appellant) and O.P.No.4 is limited to the extent of Rs. 1,50,000/- each, therefore, the appellant has been ordered to pay amount of Rs. 1,50,000/- along with interest thereon. The amount of Rs. 2,76,000/- was made payable by the owner of the truck, O.P.No.2, as mentioned in the impugned order.

We have heard learned counsel for the appellant, Sri Bindesh Kumar Gupta, as well as learned counsel for the claimant-respondents, Sri Sanjay Kaushik, and have carefully gone through the material on record including the impugned judgment and order.

It has been submitted on behalf of the appellant, the insurer of the offending truck, that is established on record that the motor accident resulting into injuries and death of the deceased Sanjay Agarwal was the outcome of the sole negligence on the part of the deceased and at the most it was a case of contributory negligence, therefore, the finding of the Tribunal that the accident took place due to rash and negligent driving by the driver of the offending truck is perverse and not tenable. We have considered the submissions of the learned counsel for the appellant. Admittedly, the truck in question was insured with appellant-National Insurance Company as well as O.P.No.4, United India Insurance Company both. Indisputably, the O.P.Nos. 3 and 4 have filed separate written statements. In its written statement, the appellant has asserted that in case the appellant is found liable to pay compensation, the liability is limited to the extent of Rs. 1,50,000/- under the Policy. In this case, the O.P.Nos. 3 and 4 have moved application under Section 170 of the Act and permission was granted to them by the Tribunal.

We take up the contention of the appellant that the accident was caused due to sole negligence on the part of the deceased or it was a case of contributory negligence. The claimants have examined as many as four witnesses in this case. Out of them, Sri Om Prakash Bansal, P.W.4, is the eye witness of the accident. There is no other eye witness produced by either parties, therefore, the evidence of Om Prakash Bansal, P.W.4 is material on the point. From a perusal of the testimony of this witness it is clear that he has given ocular account of the accident and has supported the case of the claimants on all material points. This witness has been cross-examined at length on behalf of the opposite parties. In the cross-

examination, this witness has explained all the circumstances. This witness was going on scooter and the deceased was riding on another scooter. There was a close distance between them. P.W.4 had his shop at Saharanpur Road and at the time of accident he was coming to collect payment from contractor V.K.Agarwal. This witness P.W. 4 Om Prakash Bansal had informed the father of the deceased about the accident. The F.I.R. of the accident is paper no. 39-C. This F.I.R. was lodged by Sub Inspector Shorveer Singh. In the F.I.R. itself it has been mentioned that on 18.12.1985 at about 17.25 hours, the offending truck was driven rashly and negligently by its driver, which had hit a scooter rider, who had been coming on his right/proper direction. With the help of the people the said truck was apprehended and seized. From the testimony of the witness P.W.4 coupled with the F.I.R. of this case, it is proved on record that in the present case, there was no negligence on the part of the deceased. From the cross-examination of P.W.4, nothing material could be elicited to indicate that this witness was in any way interested to support the case of the claimant or that he was giving false evidence or that he had any grudge to implicate an innocent person in the present case. The learned Tribunal has elaborately discussed all the points in the impugned judgment and order. The appellant has failed to lead any evidence before the Tribunal to indicate that the accident in question was caused due to own negligence of the deceased or that there was contributory negligence in the present case. The scribe of the F.I.R. in the present case is Sub Inspector of Police. There is nothing on record to create any suspicion on the First Information Report. Moreover, the factum of accident has been admitted by the driver and registered owner of the truck in their written statement , therefore, we are of the view that the accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the Truck No. URM-8234. The findings of the learned Tribunal on Issue Nos. 1 and 2 do not require any inference by this Court.

Learned counsel for the appellant has next submitted that the deceased being 20 years of age and not technically qualified cannot be said to be managing Sona Industries, thereby earning Rs. 54,500/- per annum. The claimants have examined P.W.1, Lakshmi Kant, who was a clerk in the Office of U.P.F.C. This witness has deposed that Uttar Pradesh Finance Corporation had sanctioned loan of Rs. 3,66,000/- to M/s Sona Chemicals. In his cross-examination, this witness has clarified that after the death of Sanjay Agarwal, the entire loan with interest had been repaid. P.W. 2 Sri Inderish Chandra Sangal is a Charted Accountant of the Firm M/s Sona Industries. This witness has prepared a project report, which has been proved by him on record. P.W. 2 has specifically stated that this Industry is a profitable industry. The statement of P.W.2 has further been supported by the testimony of P.W.3, Ram Charan Dass. P.W. 3 Ram Charan Dass has also stated that the said Unit was profitable. The learned Tribunal after considering the Income Tax Returns, available on record and taking into considering the entire evidence on record has come to the conclusion that the income of the deceased from all sources can be assessed to Rs. 4,500/- per month. Having regard to the testimony of witnesses examined by the claimants and the income tax returns, paper no. 58-C and 59-C on record, we are of the opinion that the income of the deceased has been rightly assessed by the Tribunal to be Rs. 4,500/- per month, i.e. Rs. 54,000/- per annum and after deducting 1/3rd towards personal expenses of the deceased, the loss of dependency has been determined at Rs. 36,000/- per month. The Tribunal has found the deceased in the age group of 15-20 years, therefore, multiplier of 16 has been properly applied as per Second Schedule of Section 163-A of the Act to work out the entire loss of dependency. Thus, it comes to ***16 x 36,000/- = 5,76,000/-.*** Accordingly, the learned Tribunal has awarded sum of Rs. 5,76,000/- as compensation to the claimants for the death of deceased Sanjay Agarwal. Admittedly, the liability of the Insurance Company-appellant under the Policy is limited to the amount no exceeding Rs. 1,50,000/-(one lac fifty thousand), therefore, the learned Tribunal has rightly ordered the appellant to

pay compensation of Rs. 1,50,000/- along with interest @ 12% per annum. Having considered the entire material on record, we are of the consistent view that the amount of Rs. 5,76,000/- along with interest @ 12% per annum is the just amount of compensation for the death of the deceased in the present case and the liability of the Insurance Company-appellant has been rightly determined as per terms of the Insurance Policy. The learned counsel for the appellant could not point out any illegality or infirmity in the impugned judgment and order so as to warrant inference on any count. The appeal fails on merit.

No other point was urged or argued before us in this appeal.

In the result, the appeal is dismissed. The judgment and order under appeal is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal for being paid to the claimants.

11-10-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP